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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

THOMAS W. MOORE, MARY L. MOORE - PETITIONERS

VS.

PATTERSON, BELKNAP, WEBB & TYLER, ET. Al. - RESPONDENTS

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit*

*None Of Two Federal Or Two State Courts Addressed Merits

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(I) DID THE FEDERAL COURT OF APPEALS' **WITHOUT GROUNDS REFUSAL TO HEAR OUR APPEAL** CONSTITUTIONALLY CAUSE THIS PETITION TO RESULT IN AN AS-OF-RIGHT HEARING AT THE SUPREME COURT?

(II) SHOULD CLEAR SUPREME COURT DECISIONS **BE REPEATEDLY EVADED** BY CUSTOM IN BOTH FEDERAL DISTRICT COURTS AND FEDERAL COURTS OF APPEAL?

(III) SHOULD THE SUPREME COURT ASSIGN IMPARTIAL TRIAL AND APPEALS PANEL JUDGES IN LIGHT OF SIX NYS JUSTICES FOLLOWED BY FIVE FEDERAL JUDGES COMPLETE TURN OVER THEIR "INDEPENDENCE OF JUDICIAL PROCESS" TO THE SAME, PRIVATE, LAW FIRM?

(IV) SHOULD **ALL** THIRTY-FOUR PARTNERS IN A LAW FIRM BE **GRANTED STATUS ABOVE**: USSC DECISIONS, U.S. CONSTITUTIONAL PROVISIONS, FEDERAL STATUTES, COMMON LAW, FEDERAL RULES OF CIVIL PROCEDURE AND LOCAL COURT RULES GUARANTEED TO ALL PARTIES, BECAUSE A NAMED PARTNER IS A FORMER FEDERAL JUDGE?

LIST OF PARTIES

All parties **do not** appear in the caption of the case on the cover page. Moreover, Patterson, Belknap, Webb and Tyler (Hereafter "PBW&T") have been intentionally listed as the first Respondent unlike the list's order at two lower Federal Courts. This was done for two reasons. (1) PBW&T is the **central cause** of Petitioners' inability to obtain any hearing, much less a hearing on-the-merits from 6/90 through today's date. (2) PBW&T **has** by some secret method **become** the "**Judiciary**" under Art. III and Art. IV through this time period. A list of all the Respondent parties to the proceeding in the court whose FINAL ORDER is the subject of this petition is as follows: (1) NEW YORK STATE (Hereafter "NYS") COURT SYSTEM, (2) MARIO M. Cuomo as Governor of NYS, (3) ANN T. MIKOLL as Justice of NYS Supreme Court Appellate-Division Third Department (Hereafter "JSC AD-3d"), (4) PAUL J. YESAWICH JR. JSC AD-3d, (5) D. BRUCE CREW III JSC AD-3d, (6) THOMAS E. MERCURE JSC AD-3d, (7) NORMAN L. HARVEY JSC AD-3d, (8) JOAN B. LEFKOWITZ JSC, (9) MARIO M. CUOMO as an Individual Attorney (Hereafter "Esq."), (10) ANN T. MIKOLL Esq., (11) PAUL J. YESAWICH Jr. Esq., (12) D. BRUCE CREW III Esq., (13) THOMAS E. MERCURE Esq., (13) NORMAN L. HARVEY Esq., (14) JOAN B. LEFKOWITZ Esq., (15) JOHN D. WINTER Esq.

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THIS USSC IS NOTIFIED THAT TOM WAS TELEPHONED ON OR ABOUT 11/18/95 BY THE 2D. CIR. HANDLING TOM 11/15/95 MOTION AS A "PETITION FOR REHEARING". TOM DECLINED BECAUSE AN AS-OF-RIGHT HEARING HAS GREATER SIGNIFICANCE. HOWEVER, TOM'S 90 DAYS TO FILE SHOULD BEGIN WITH THE 11/27/95 DENIAL OF TOM 11/15/95 MOTION.

APPENDIX A: 11/27/95 FINAL "ORDER" COVERS 10/18/95 "ORDER" BOTH BY THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

APPENDIX B: 12/22/94 ENTRY DATE FOR DENIAL "ORDER" OF AMENDED COMPLAINT CONTAINING 260 FACTUAL VALID CAUSES OF ACTION, (HEREAFTER "FVCA") NO REASON GIVEN BY UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK (HEREAFTER "USDC SDNY").

APPENDIX C: 11/1/94 ENTRY DATE OF SUMMARY JUDGMENT "ORDER" "NO FVCAs" & "RES JUDICATA" "ORDERS" BY USDC, SDNY.

APPENDIX D: 7/23/93 NYS AD-3D APPELLATE DENIAL "ORDER" FOR CERTIFICATION OF LACK OF JURISDICTION TO USSC OR FOR PERMISSION TO APPEAL.

APPENDIX E: 4/29/93 NYS AD-3D APPELLATE UPHOLD "ORDER" OF NYS 12/3/91 "ORDER".

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APPENDIX G: 9/12/95 DENIAL OF AN IMPARTIAL PANEL OF JUDGES.

APPENDIX H: 9/30/93 2D CIR. RECEIVED REQUEST FOR IMPARTIAL JUDGE.

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3/26/91 "ARBITRATION" BETWEEN DONNELLAN

& GRANT. 4

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1995

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the final order below.

OPINIONS BELOW (NONE ON THE MERITS)

The 11/27/95 "Final Denial Order" of any Hearing or Appeal and the 10/18/95 "Order" of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The "Final Denial Order" of Motion to Amend of the United States district court appears at Appendix B to the Petition and is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is unpublished.

The opinion of the highest NYS court appears at Appendix D to the petition and is reported at 192 A.D. 2d. 1021 (4/29/93).

The opinion of the NYS supreme court appears at Appendix E to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals entered its "Final Order" was 11/27/95. This covered an earlier "Final Order" of 10/18/95. No DECISION was or will be made. The as-of-right **APPEAL**, following my 12/5/94 Notice of Appeal at USDC, SDNY, **has been DENIED us.**

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

TOM admits that this appears to require a second Statement of Authorities, other than case citations. If so, they are hereby restated in full.

However, the refusal of both the 2d Cir. and USDC, SDNY to even grant TOM a hearing (not to forget that two NYS Courts refused to even appear to follow the "Judicial Process") constitute 5½ year violations of the U.S. Constitutional Amendments V and XIV: "No person shall - be deprived of - liberty or property, without due process of law" 5th Amend. Add "No State to aforementioned" for 14th Amend. For 5½ years the 14th Amendment guarantee of "No State (including two federal courts 'within its jurisdiction') deny to any person the equal protection of the laws." has been violated in their "Orders".

The "Private Party", PBW&T including Mr. Winter Esq. has succeeded in taking over the U.S. Constitutional term "Judiciary" under the "Separation of Powers" guaranteed in Articles I, II and III. PBW&T has also accomplished violating Article IV §s 1, 2 and 4. The problem is: what can a citizen do where six NYS Justices and five Federal Judges allow all of the aforementioned to happen?

STATEMENT OF THE CASE

This case evolved from questioning the **legal authority** of Rockland County to terminate the employment of petitioner Mary Moore in June 1990. This case cannot be understood by separating fact from law. Ninety percent of this case consists of questions of law. A 3/26/91 "Arbitration" is crucial to granting a 9/30/91 motion for summary judgment under NYS CPLR Rule 3212 (a) & (b). This law is similar to Fed. R. Civ. P. 56. Respondents Patterson, Belknap, Webb and Tyler and partner John Winter Esq. (hereafter "PBW&T") motion's false affidavit claims this "Arbitration" was **against** petitioner **Mary Moore.** Yet, Mary was: (1) not present, (2) not represented, (3) not notified, (4) **not a party.** Petitioners Tom and Mary Moore (hereafter "TOM") were from 8/90 through 4/93 represented by attorneys. TOM pleaded, in opposition to this motion, that the "arbitration" was a "Sham". On 12/3/91 one NYS Justice, knowing this crucial question of fact, entered an alleged summary judgment order. On 4/29/93 five NYS Justices entered an alleged appellate uphold order. Neither alleged "order" states: "This order is: 'on the merits' or 'with prejudice". By common law, this NYS case is not Res Judicata. Neither "order" satisfies Article IV § 1 as a "Full Faith and Credit - **judicial Proceedings**".

On 12/29/93 TOM wrote both Chief Judge Griesa and also Chief Judge Newman that Harold R. Tyler Esq., as named partner of PBW&T and a former Federal Judge **would be sued** (for PBW&T acts) in SDNY. TOM included a Complaint naming 114 VIPs. TOM asked Chief Judge Newman, under 28 USC § 291 et seq., to request this USSC to obtain an impartial Federal Judge. Neither Chief Judge acted to obtain an impartial Judge for TOM's federal case.

On 1/14/94 TOM filed 12/29/93 Complaint in SDNY. On and after 2/28/94 TOM served 114 defendants with First Amended Complaint. On 3/16/94 TOM moved for permission and served Second Amended Complaint. On 11/1/94 Chief Judge Griesa, without either notice of his intent to TOM or Motion by Defendants, invoked Fed. R. Civ. P. 56 based upon "No Factual Valid Cause of Action"

(hereafter "FVCA") Summary Judgement Order against TOM. On 11/15/94 TOM filed Motion to Alter or Amend judgment with: amended complaint containing **260 FVCAs** against 114 defendants, numerous documents from NYS pleadings and record. On 11/22/94 Chief Judge Griesa before any reply by defendants and **without stating any grounds** denied TOM's Motion to Amend. On 12/5/94 TOM Filed a Notice of Appeal to: (1) 11/1/94 Summary Judgment Order and (2) 11/22/94 Denial of Amended Complaint Order.

TOM filed a Motion at the Second Circuit on 1/27/95 to obtain an impartial panel of Judges. This motion was submitted to Chief Judge Newman. This Motion was returned to TOM on 10/5/95 ie. Eight and One-Half months later. Judge Newman **Denied TOM an Impartial Panel of Judges!** On 8/8/95 Tom was forced to submit to a previously unknown, emergency surgery to remove life threatening cancer. Infection developed thereafter and Tom was forced to undergo massive Radiation Therapy and Chemotherapy in hospital for a second unforseen life threatening emergency. During these emergencies Tom had probable cause to believe that the Second Circuit had been notified and no Oral Argument would be scheduled. In 9/95 Mary was notified of a scheduled 10/12/95 Oral Argument Date.

The Second Circuit, in writing, authorizes a Pro Se Appellant to represent spouse. On 9/28/95 Second Circuit received two notices of TOM request for Oral Argument postponement sent by both Mary and also Tom's physician citing Tom's emergency illness. Second Circuit Local Rule 34 (c) entitled "Postponement of Argument" states: "**Except** in the event of an **emergency, such as an unforeseen illness of counsel** (no postponement)". Local Rule 34 (d) states: "If the court, - contemplates deciding an appeal without hearing oral argument, **each of the parties** will be given an opportunity **to file a statement** setting forth reasons for hearing oral argument". TOM, upon Tom's 11/10/95 partial recovery, filed a motion pursuant to Local Rules 34 (c) and (d) and requesting Oral Argument. Second Circuit **Denied** its own as-of-right Rules **without**

stating a reason. This motion Denial was filed 11/27/95.

REASONS FOR GRANTING THE PETITION

(I) DID THE FEDERAL COURT OF APPEALS' **WITHOUT GROUNDS REFUSAL TO HEAR OUR APPEAL** CONSTITUTIONALLY CAUSE THIS PETITION TO RESULT IN AN AS-OF-RIGHT HEARING AT THE SUPREME COURT (HEREAFTER "USSC")?

This USSC to fully understand the gravity of this petition, is hereby asked to **examine:** the facts and law stated under **STATEMENT OF THE CASE** and under any one "Question", as if they also were stated under any other "Question" as grounds for granting TOM petition. Second Circuit's (Hereafter "2d. Cir.") 11/27/95 **Denial of any Hearing** without stating a reason for denying TOM's right to Oral Argument constitutes: (1) violation of as-of-right guarantee "to every party" under 2d Cir. Local Rules 34 (c) and (d). (2) **denial** of a guaranteed **as-of-right Appeal** after TOM's timely filed 12/5/94 Notice of Appeal at USDC SDNY. (3) violation of both due process of law under the 5th & 14th Amendments and also equal protection of the laws under the 14th Amendment due to: (a) TOM 12/29/93 Notice to 2d Cir. of need and specific reasons for impartial Judge. (b) TOM 12/29/93 request that Chief Judge Newman invoke 28 USC § 291 et. seq. to **CERTIFY** this need to the USSC. (c) **Denial of** TOM 1/27/95 **Motion,** on or about 10/5/95 over 8 months later by Chief Judge Newman, for **"an impartial** (disinterested) **Panel of Judges** in light of 114 VIP Respondents".

USSC Rule 19 "Procedure on a Certified Question" states: USSC "on its own motion or that of a party may consider and decide the entire matter in controversy." Both Chief Judge Griesa and also Chief Judge Newman **on 12/30/93** when they were fully notified of TOM lawsuit, **possessed knowledge** that neither the USDC SDNY nor 2d Cir. could provide an impartial Judge to ensure either the 5th or 14th Amendment guarantees of due process of law and equal protection under the laws for TOM Complaint sent with TOM notice. Evidence of said knowledge is the results from 12/30/93 through today's date. Judge Newman's 10/5/95 mailed **Denial** of TOM's 1/27/95 **Motion for an impartial Judge**

after TOM experience in USDC SDNY constitutes, by itself, sufficient evidence that Judge Newman was **duty bound to CERTIFY this question** and submit it to USSC. If no other ground exists, this **certified question of law** constitutes ground for USSC considering this entire matter in controversy.

PBW&T may argue that Tom is: (1) not entitled to join Mary. (2) not entitled to act as Counsel for Mary at 2d Cir. Tom at USDC SDNY pleaded that Tom has an insurance disability contract in NYS Courts that will become unwinnable solely due to Tom joinder with Mary. 2d Cir. (a) not only has a **written** statement that one appellant spouse may act as counsel for another spouse (b) but also on every motion for which Tom was granted extensions of time to file TOM's Brief by 2d Cir., Tom was listed as "attorney in charge of case".

PBW&T may argue that TOM was granted an appeal by 2d Cir. "paper" filed on 10/18/95 (Appendix exhibit to TOM 11/15/95 Motion for our rights under Local Rules 34 (c) and (d). Examination of TOM Two Briefs shows that every legal error made by 2d Cir. on its 10/18/95 "paper" is absolutely rebutted with correct citations and quotes in TOM's briefs already submitted to 2d Cir. PBW&T's 2d Cir. brief falsely **claims**: "Polur v. Raffe, 727 F. Supp. 810, 816 (SDNY 1989) **aff'd in relevant part**,. 912 F. 2d 52 (2d Cir. 1990) - because these state court judges are immune from suit, (TOM) cannot maintain a civil rights conspiracy claim against (PBW&T)." PBW&T's false citation **omits**; (a) the fact that 2d Cir. in Polar, supra. stated the direct opposite to PBW&T's claim. (b) the USSC 9 to 0 Decision in Dennis v. Sparks, 449 U.S. 24, 88 L. Ed. 185, 1010 S. Ct. 183 (USSC **11/17/80**): "Action under 42 USC § 1983 against private parties who allegedly conspired with state judge, held maintainable despite judge's immunity" (cited and quoted **in Polur**, supra. [5] on p. 56). PBW&T's false citation directly caused the 2d Cir. 10/18/95 "paper's" holding to be in direct conflict with Dennis, supra.

But TOM **Reply Brief** rebutted PBW&T's claim. TOM asserts this fact, legal citation and quote as evidence that 2d Cir. Panel of Judges for some

unknown reason - refused to even read TOM two Briefs either before the 10/12/95 scheduled Oral Argument or after it while preparing and signing this 10/18/95 "paper". This constitutes: **Second Denial of; (a) any Hearing** and (b) **Second Denial of Tom as-of-Right Appeal** by 2nd Cir.. Either set of facts constitutes "a compelling reason" to grant Petition.

(II) SHOULD CLEAR SUPREME COURT DECISIONS **BE REPEATEDLY EVADED** BY CUSTOM IN BOTH FEDERAL DISTRICT COURTS AND FEDERAL COURTS OF APPEAL?

TOM from 8/90 through 4/93 was represented by a law firm with NYS appellate experienced and USSC admitted attorneys. This law firm contracted to represent TOM "Throughout all aspects of Mary's employment discharge dispute". In 12/93 TOM not only demanded specific performance but also sent substantial moneys retainer to said law firm. TOM is Pro Se **only** because **no attorney** is willing to commit legal **career suicide** by representing TOM against these 114 VIPs. Shepardizing Dennis, supra. in L. Ed. 2d disclosed Three Hundred Ninety-Six (396) citations. TOM examined the 103 cases in 1st, 2nd, and 3rd Circuits. In the 2d. Cir. 34 out of 40 cases were summary judgment dismissed. In 103 Circuit cases, **not one was found where the plaintiff won damages against attorneys conspiring with state judges**! Yet, this is the reason for Dennis, supra.!

Foman v. Davis, 371 U.S. 178, 9 L. Ed. 222, 83 S. Ct. 227 (12/3/62) "Denial (of motion) to amend pleadings is within the discretion of Federal District Court under Fed. R. Civ. P. 15 (a) but no justifying reason is merely abuse of discretion". A summary judgement Order "No Factual Valid Cause of Action (hereafter "FVCA") was entered on 11/01/94 by USDC SDNY. TOM filed a Motion to Alter or Amend on 11/15/94 with an Amended Complaint containing **260 FVCAs** pursuant to Fed. R. Civ. P. 59 (e). TOM's Motion was timely. USDC SDNY: "(TOM's) motion is denied in all respects" entered 12/22/94. The USDC SDNY gave **no justifying reason** for its Denial of TOM Motion to Amend. Pursuant to Foman, supra. this Order is "abuse of discretion".

The cases dealing with "reasons for denial" list "prejudice to opposing party" as the most of ten accepted grounds. Normally a trial has been scheduled and delay could eliminate a defense witness, etc.. Here no trial was scheduled. Since all defendants **were initially served** with TOM First Amended Complaint, TOM can argue that, to these defendants, TOM 11/15/94 Complaint equated to a Second Amended Complaint. But this is the primary grounds for Fed. R. Civ. P. 15 (a) "on the merits" grant of amended pleadings.

TOM filed our Notice of Appeal on 12/5/94 (entered on 12/29/94). TOM appealed both the Summary Judgment Order and also the Denial of Motion to Amend Order. TOM **pleaded** the USDC's "abuse of discretion" and Foman, supra. to 2d Cir. in our Appellants Brief pg. 35, filed 4/6/95. 2d Cir. on both 10/18/95 and also 11/17/95 **Denied** Tom **any Hearing** (or **as-of-right Appeal**). 2d Cir. 10/18/95 "paper" states: "judgments of (USDC SDNY) **are AFFIRMED**" (Appendix). This is further evidence that 2d Cir. refused to even read TOM two Briefs. Two lower federal courts **evaded** Foman, supra.

Haines v. Kerner, 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 652 (1972) "A pro se complaint is held 'to less stringent standards than formal pleadings drafted by lawyers". 2d Cir. 10/18/95 "paper" (Appendix) states: **"This summary order will not be published in the federal reporter and should NOT BE CITED OR OTHERWISE RELIED UPON in the unrelated cases before this or any other court"!** How many cases during 16 years (since Dennis, supra. USSC, 9 to 0, Decision) have been buried by: (1) USDCs in 2d Cir., (2) similar 2d Cir. 10/18/95 "papers", (3) other USDCs, (3) other Cir.s? Are the 396 cases found in F. Rp. or F. Supp. only the "Tip of an iceberg"?

2d Cir. 10/18/95 "paper" **buried** TOM 4/6/95 brief & appendix, PBW&T's brief and TOM's 6/12/95 reply brief. TOM 6/12/95 Reply Brief pg. 34 disclosed PBW&T's false claim as to Polur, supra.. TOM intended to add Dennis, supra. at Oral Argument. 2d Cir. **in writing:** (1) Denied our two timely requests for Oral Argument (Appendix "A" three exhibits). (2) violated 2d Cir. Local Rules

34 (c) and (d). (3) buried its refusal to even read TOM's Briefs (4) buried evidence of its evasion of Dennis, supra. USSC Decision contained in TOM 11/15/95 motion.

Aforementioned two pars. violated Haines, supra.. Why? Because "less stringent standards" is **identical** to "more liberal examination" by any court of a pro se party's pleading. But TOM pleadings could ONLY be "more liberally examined" by **granting our two written 9/95 requests for Oral Argument!** Moreover, is this evidence of **only one** violation of Haines, supra.? How many pro-se appeals, guaranteed by Haines, supra. (1972) **during 24 years**: (a) have occurred? (b) are "unpublished" buried? (c) no petition for certiorari submitted due to loss of hope? (d) petitions denied? When examining our Petition for USSC review, we ask the examiners to not only consider lower federal court abuse of: Haines, supra., Foman, supra., Dennis, supra. and the practice of federal courts' burying an unpublished "paper" to TOM but also **how many tens of thousands** of similar cases have either not been submitted or been denied certiorari by prior USSC examiners? Acceptance of TOM case acts to represent tens of thousands of **similar cases** and to reverse all cases currently in process in lower Federal (and State) courts.

Does USSC have an (unwritten) rule that layperson pro se petitions (other than capital cases) are uniformly denied? If this rule does exist, **TOM should be an exception** to this rule. Both the USDC SDNY and also 2d Cir. had to be under heavy **pressure** to cause them to violate: (1) 5th Amendment, (2) 14th Amendment, (3) Haines, supra., (4) Foman, supra., (5) Dennis, supra., (6) Fed. Rs. Civ. P. 15 (a), and 56, (7) Local Rules 34 (c) and (d), etc.. This pressure should not have existed. Only a small percentage of layperson pro se parties can present legal argument to compete with PBW&T. A USSC hearing will be "a fair adversarial contest"! If TOM did not match PBW&T, no provision, decision or rule need be violated by the two lower federal courts. TOM is not just one, unique case. TOM constitutes a: "**Class of** pro se parties and attorney represented parties who do not

sue 114 VIPs, **legally** (not factually) **similar cases** in every federal court **for 24 years**". USSC should not wait for some attorney to be willing to commit legal career suicide because this may never occur! By custom **evasion** of three USSC Decisions by lower federal courts constitutes a "compelling reason" to grant TOM Petition.

(III) SHOULD THE SUPREME COURT ASSIGN IMPARTIAL TRIAL AND APPEALS PANEL JUDGES WHERE SIX NYS JUSTICES FOLLOWED BY FIVE FEDERAL JUDGES COMPLETELY TURNED OVER THEIR "INDEPENDENCE OF JUDICIAL PROCESS" TO THE SAME, PRIVATE, LAW FIRM?

TOM case is similar to Dennis, supra. since PBW&T's private party's conspiracy with a judge subverted the judicial process thereby injuring TOM. However, PBW&T subverted the **independence of the judicial process throughout TWO COURT SYSTEMS.**

TOM USDC SDNY case 94 Civ. 0208 (TPG) served: Governor Cuomo, and six NYS Justices both officially and also as individual attorneys; the entire NYS Court System Judiciary officially; PBW&T as a Partnership of attorneys and Winter Esq. as an attorney. TOM sued NYS State Governor for abusing his executive power to not only take over one Justice's lower court but also to take over one Appellate Division five Justices' court. **Any** Governor can by similar method take over **every** state court creating a Governor Court System in direct violation of U.S. Constitution Art. IV § 4. This conspiracy was "**secretly**" accomplished. TOM pleaded in the alternative that it is policy or custom of all NYS courts to violate U.S. Constitutional Provisions by conspiring with one party's law firm where that party is a division of NYS or an executive of said division.

It is one act to bribe one judge ie. Dennis, spra.. It is far more **serious** to - by some method - control every State Court at every level. "Compelling reason One" is it is crucial to investigate at a jury trial, presided over by an impartial Federal Judge, "**How PBW&T controls the entire NYS Court System!**" PBW&T has by some "secret" method "pressured" five Federal Judges, to violate: Clear USSC Decisions, U.S. Constitutional

Provisions, etc. "Compelling reason two" asks the added question **"How did PBW&T take over a large portion of the Federal Judiciary's power under Article III and Article IV of the U. S. Constitution?"** Neither Question will be answered unless USSC accepts TOM Petition and carefully selects a Federal Judge who will not act as five Federal Judges have already acted!

First: The entire NYS "Proceeding" was totally waived by PBW&T. Six NYS Justices violated NYS JUDICIARY STATUTES. TOM federal 11/15/94 Amended Complaint pg. 9 par. 21 states:

> "TWENTY-FIRST: PBW&T's Seventeenth through Twenty-Seventh fvc/as are: PBW&T intentionally violated CPLR 3211 (3) and thereby **deceived** six NYS Justices. PBW&T served a Verified Answer on **7/31/91**. Nowhere in said answer is 3211 (5) 'Arbitration and award' mentioned or reserved for use in a Motion to dismiss much less a Motion for Summary Judgement. On or about **9/30/91** PBW&T obtained an Index Number and filed its Motion to Dismiss and for Summary Judgement. The Key to filing of both these Motions are affidavits that caused the Court to believe that all of the issues are eliminated. Anderson's Affidavit asserts that an arbitrator in an arbitration grievance **against Mary** determined that no issues remained unresolved. The fact that Anderson's affidavit was **subornation of perjury** by PBW&T both times Anderson stated "against **Ms. Moore**" constitutes one fvc/a by PBW&T against five AD-3d Justices of **deceit**. PBW&T's intentional violation of 3211 (e). 'Any objection or defense based upon a ground set forth in par. - five, - is **waived** unless raised in the responsive pleading". This formed a **second deceit** of six NYS Justices. PBW&T filed its Motion as if PBW&T's answer raised Rule 5(a) "Arbitration".

Second: TOM notified both federal courts that the entire NYS "Proceeding" had a **second crucial defect.** The 9/30/91 PBW&T motion was solely grounded upon PBW&T's false claim that the

3/26/91 Arbitration was against **Mary**. This NYS "proceeding" began on 10/4/91 and ended on 7/23/93. Six NYS Justices **were notified** by TOM attorneys that this "Arbitration" was a "**Sham**".

This is a Question of Fact on a Judicial STATUTORY requirement.

This "Proceeding" per CPLR Rule 3212 (b): "(PBW&T) motion **shall be denied** if any party shall show facts sufficient to require a trial of any issue of fact" - (TOM Bold)

Based solely upon these aforementioned STATUTES, this **entire NYS "Proceeding" was** not a "Judicial Process"!

Other Statutory issues are: First, from 3/2/87 to date of Mary's illegal termination over 3 & 1/3 years later, Rockland County's Executive violated the only statute (NYS Executive Law § 357) upon which Rockland County totally relies to claim that Mary was an "At-will employee". Estoppel prevents Rockland County from making this allegation. Second, Mary was fired solely because mary whistle-blew that Rockland County was violating NYS Constitution Art. 8 § 1. This violates NYS Civil Service Law 75 (b) preventing firing, even if Mary were "At-will". This raised First Amendment "Freedom of Speech" Cause of Action.

TOM NYS attorneys, being appellate experienced, diligently contested every issue raised by PBW&T not solely with facts but also with 134 citations and other authorities. NYS officials must justify their **5th and 14th Amendments violation by denial of due process of law and equal protection under the laws** in light of TOM Attorneys' pleadings. TOM federal 11/15/94 Amended Complaint par. 3 emphasizes this fact:

> "THIRD: - the difficulty that Tom experienced in analyzing two exhibits hereto. Exhibit One is the JSC 12/3/91 NYS court order. Exhibit Two is the 4/29/93 AD-3d Uphold of the 12/3/91 Order. The true reason is the every matter involved in this case relies on

One NYS Summary Judgement Principle. This Principle is **"If an issue is arguable, trial is needed and the motion must be denied."** Barrett v. Jacobs, 255 N.Y. 520, 175 N.E. 275 (1931). -

TOM prepared a Motion for permission to appeal directly to USSC based upon the grounds of **total lack of Jurisdiction** of all six NYS Justices. TOM filed both a Motion with NYS Ad-3d on 5/29/93 and a Reply affidavit on 6/26/93 for CERTIFIED IMPORTANCE OF THE CONSTITUTIONAL ISSUE(S) citing Supreme Court Practice Stein & Gressman Pg. 85. In these two documents TOM stated facts that violate: Art. I § 10, Art. IV §s 2 & 4, Art. I through Art. III "Separation of Powers" and again **specifically asked NYS AD-3d to CERTIFY these issues to USSC**. On pages 4 and 5 of Mary's 6/26/93 Reply affidavit TOM specifically identified 209 Triable Questions of Fact that exist in the NYS alleged case "Record".

Both USDC SDNY and 2d Cir. knew of TOM notice to NYS AD-3d five Justices. On 4/8/94 TOM served and filed an Affidavit IN USDC SDNY on pg. 1 states:

> "3. Black's Law Dictionary 4th ed. defines "Jurisdiction" as: "It is the authority, capacity, power or right to act." Exhibit #1 hereto consists of three pages from our 5/30/93 Motion to appeal to a USDC from Index 7036/91 Summary Judgement 12/3/91 Order and Ad-3d's #66853 4/29/93 Uphold of said Order. - The key is notice on the Second. **'NO JURISDICTION OCCURS for Summary Judgement Proceedings in any Court where ONE QUESTION OF FACT exists. -**
>
> 4. Exhibit #2 hereto consists of two pages from our 6/26/93 Reply Affidavit. These are exhibit #3 that specifically identifies 142 Triable Question of Fact and exhibit #4 that specifically identities 54 additional Triable Questions of Fact.-"

Legally "silence shows consent" see 6 Barb. (N.Y.) 28, 35. USDC SDNY and 2d Cir. **evade** Foman,

supra., Fed. R. Civ. P. 15 (a), and 2d Cir. Local Rules 34 (c) and (d) solely to remain **silent** to TOM 11/15/94 Amended Complaint's 260 FVCAs evidence. The majority of this evidence exists in the 12/3/91 and 4/29/93 "orders" signed by six NYS Justices versus PBW&T's pleadings. TOM 11/15/94 Complaint shows how five NYS Justices' "order" acts as evidence that said Justices conspired with PBW&T.

> NINETY-FOURTH: AD-3d cited 26 Cases in Exhibit Two. Five were Murphy, supra. Five were other Cases in PBW&T's Respondents Brief. **Sixteen were Cases not cited by PBW&T nor by Mary's Attorneys.** Tom asserts that the facts in pars. EIGHTY-SECOND through NINETY-FOURTH constitute prima facie evidence of both collusion and also fraud of Mary by all five Justices in Ad-3d with the consent or active participation of PBW&T.

This evidence clearly shows the existence of a conspiracy between PBW&T and these six NYS Justices. Both lower federal court "orders", not considering their silence's **admission** of the conspiracy, dismiss PBW&T's liability to TOM. There are five elements of this **compelling reason**: (1) There exists some secret reason why **six** NYS Justices acted both **in unison** and also **so corruptly** from 10/4/91 through 7/23/93 while TOM was represented by NYS experienced appellate attorneys. (2) **PBW&T drafted** both "orders" **without notice** by either NYS court to TOM attorneys. (3) Both lower federal courts absolutely refused: (a) to provide impartial Judge(s). (b) to address the 260 FVCAs or their resulting 20+ Constitutional Provision violations. (c) to grant TOM any guaranteed Hearing. (4) Either NYS Governor Cuomo, for his own personal gain, coerced the six NYS Justices to violate Article IV of the U.S. Constitution (80% probability), or (5) The NYS Court System by custom or policy violates numerous U.S. Constitutional Provisions, whenever a division of NYS or executive of said division of NYS is a party to said case (20% probability), in favor of said division/executive.

This "**compelling reason**" is exacerbated because: (a) similar secret conspiracies may today

control the outcome of other States court cases. (b) conspiracy required participation by PBW&T with six NYS Justices that no attorney dares disclose to the USSC. (c) this requires a non-lawyer party (who dies not fear career suicide) to somehow overcome thousands of other Petitions solely to obtain a hearing at the USSC. (d) it defies the purpose of absolute judicial immunity "to protect the independence of the judicial process"! There existed no "independence" from 10/4/91 through 11/27/95 in either NYS Court System or Federal Court System.

TOM 6/12/95 Reply Brief that was totally disregarded by 2d. Cir. pg. 25 cites and quotes from:

In Ex parte Virginia, 100 U.S. 339, 25 L. Ed. 676, "USSC held that a Judge who excused Negros from juries could be held liable under the Act of March 1, 1875 (28 Stat. 335), one of the Civil Rights Acts. The Court assumed that the judge was merely performing a ministerial function' pg. 26 Ex parte Virginia, supra. The Law of Torts 1642-1643 (1956) "When a judge acts intentionally and knowingly to deprive a person of his constitutional rights he exercises no discretion or individual judgement; he acts no longer as a judge, but as a minister of his own prejudices (TOM Bold)

2d. Cir. 10/18/95 "paper affirms the USDC judgment(s)", but 2d. Cir. overrules the USDC.

2d. Cir. 10/18/95 "paper" Holds: "This suit was properly dismissed against the private defendants, the law firm and the lawyer representing defendants - in (NYS), since the complaint failed to allege any governmental action by these two defendants. The suit was properly dismissed against the remaining defendants who are protected either by judicial immunity or in the case of the former governor, by Eleventh Amendment immunity." USDC 11/1/94 entered Order Holds: "With regard to (PBW&T) there is nothing approaching a factually sufficient statement of a valid cause of action against these defendants."

2d. Cir. 10/18/95 "paper" not only is in direct opposition to Dennis, supra. and Polur, supra. but also overrules USDC.

Immunity for a state governor who is not engaged in a "judicial act" is only "Qualified immunity" if he knows or should have know that he/she was violating: Article I § 10 "No State shall - grant any Title of Nobility", Article IV § 4 "The United States shall guarantee to every State - a Republican Form of Government (three independent branches). By coercing NYS Justices to violate the 1st, 5th and 14th Amendments, etc.. Governor Cuomo knew that he possessed no judicial immunity and that his qualified immunity was useless to overcome the pleadings in TOM complaint served personally on attorney Cuomo on 2/28/94.

TOM Moved Judge Griesa to order default judgment against Attorney Cuomo due to his failure (for **two years**) to respond to Judge Griesa's Summons, served by a NYS licensed Process Server's personal service and also a Certificate of Service USPS marked 2/28/94 by this same licensed process server as substituted service. Judge Griesa again remained silent to TOM motion with copies of all required documents.

(IV) SHOULD **ALL** THIRTY-FOUR PARTNERS IN A LAW FIRM BE **GRANTED STATUS ABOVE:** USSC DECISIONS, U.S. CONSTITUTIONAL PROVISIONS, FEDERAL STATUTES, COMMON LAW, FEDERAL RULES OF CIVIL PROCEDURE AND LOCAL COURT RULES GUARANTEED TO ALL PARTIES SOLELY BECAUSE A NAMED PARTNER IS A FORMER FEDERAL JUDGE?

TOM acknowledges the impressive credentials of Harold R. Tyler Jr. Esq., named partner in PBW&T. "Judge" Tyler Esq. was a Federal Judge in USDC SDNY from 1962-1975. He was Deputy Attorney General 1975-1977. He has been a practicing attorney as a partner (Member) of PBW&T apparently from 1977 through today's date, ie. **Eighteen Years**. During this 18 years he was FEderal Bar Council President 1979-1980. He currently holds active membership in New York City, New York State and the American Bar Associations and is a Fellow, American College of Trial Lawyers among numerous other positions.

"Judge" Tyler Esq. may be on a first name basis with every Federal Judge in the Second Circuit including almost certainly with Chief Judge Griesa who improperly, refused to recuse himself even after TOM 12/29/93 letter Notice. TOM acknowledges that "Judge" Tyler Esq. probably receives exceptional professional courtesy at every USDC in the Second Circuit. He may receive exceptional professional courtesy at other Federal Courts **perhaps even at the USSC** especially if "Judge" Tyler Esq. decides to assume personal defense of PBW&T against TOM case.

However, "Judge" Tyler Esq. has been paid substantial sums of partnership **profits for Eighteen Years** due to all PBW&T client retainer and fee payments solely as an attorney! PBW&T Partner John Winter Esq. has handled all PBW&T pleadings from 6/90 through today's date ie. 5½ years. It is **significant** that Attorney Winter was selected by PBW&T to **act Pro Se for PBW&T** from time of service in March 1994 to date. All PBW&T letters to USDC SDNY and Second Circuit Judges had letterhead stationary with Harold R. Tyler Jr. Esq. the first thing that any Judge saw!

"Judge" Tyler Esq., as a Respondent/Defendant, is equally liable for all of Winter/PBW&T U.S. Constitutional violations, violations of Fed. R. Civ. P. 11 and NYS Judiciary Law § 487, etc. damages award against him personally, just as each of the 34 PBW&T Partners are liable for damages. Moreover, Attorney Cuomo Esq., partner in Willkie, Farr & Gallagher since 2/6/95, adds a "deep pocket" additional defendant to further reduce potential financial annoyance to "Judge" Tyler Esq..

However, it is possible that after five Federal Judges have "protected "Judge" Tyler Esq." that all five Federal Judges have been deceived! TOM made several visits to PBW&T to hand deliver pleadings. **Every time**, that Tom met with one or more Lawyer Receivers they uniformly said "Oh, this is the Rockland County Case". TOM always thought this was ignorance because since 1/14/94 PBW&T has been sued totally independent of Rockland County. However, these Lawyers may be 100% correct. PBW&T

and "Judge" Tyler Esq. may have **NO FINANCIAL RISK.** Rockland County may pay every bill and every damages claim against PBW&T and Tyler. This would mean that this Federal Court System has been induced to violate all these laws solely to maintain the myth that PBW&T will always win! Clearly, even these five Federal Judges want to know if this fact is true.

The USSC should consider the "**Precedent**" that TOM 5½ year total denial of two private citizens' rights in both State and also Federal Courts will have **if the USSC denies TOM Certiorari**. TOM has not only been denied "Civil Rights" but also TOM has been denied even one hearing in four courts in two Court Systems. Three of these four court "orders" on their very face are **not Res Judicata** but 2d Cir. has **entered an Injunction** preventing TOM from seeking any future legal remedies to which Tom is otherwise entitled. This "Precedent" effectively eliminates both State and Federal "judiciaries" under Constitutional Provisions in Art. III, Art. IV and Art. VI as the "independence of the judicial process" protectors whenever PBW&T or a similar type law firm acts as an "advocate".

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Thomas W. Moore
Thomas W. Moore

Mary L. Moore
Mary L. Moore

January 15, 1996